

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VII

WATER QUALITY CERTIFICATION IN  
ACCORDANCE WITH SECTION 401 OF THE CLEAN WATER ACT FOR  
NEW AND REVISED NATIONWIDE PERMITS  
IN INDIAN COUNTRY

June 1, 2000

**A. WATERS OF THE U.S. TO BE EXCLUDED FROM NWP USE IN INDIAN COUNTRY**

All high quality waters that are identified by the Tribes as constituting an outstanding National resource such as waters of exceptional recreational, ecological, or cultural significance. To date the following waters have been identified:

- 1) Meskwaki Nation: that reach of the Iowa River located on or within the boundaries of property associated with the Sac and Fox Tribe of Mississippi in Iowa
- 2) Potawatomi Indians: that reach of Big Soldier Creek located on or within the boundaries of the property owned by the Prairie Band of Potawatomi Indians in Kansas.
- 3) Santee Sioux Tribe and Ponca Tribe: those reaches of the Missouri River and Niobrara River located on or within the boundaries of property associated with the Santee Sioux and Ponca Tribes of Nebraska.
- 4) Winnebago Tribe: Wetland Complex #1 and that reach of the Missouri River and its floodplain wetlands located on or within the boundaries of the property associated with the Winnebago Tribe of Nebraska.

**B. TYPES OF DISCHARGES NOT AUTHORIZED BY THIS CERTIFICATION**

This certification does not authorize the following:

- i) the placement or construction of septic systems in wetlands,
- ii) the use of dams to impound waters of the U.S.,
- iii) the construction of any portion of a facility for a confined animal feeding operation, including, but not limited to, the construction of buildings and sewage lagoons,
- iv) the filling of a spring or their associated wetlands, and
- v) discharges of the following unsuitable materials:

buses, rail cars, broken concrete with excess fines, with contamination or with exposed rebar; tires of any kind; or unprotected sand, gravel, or earth fill in contact with flowing water (e.g., stream bed material shall not be pushed against banks for erosion control or used for stream bank stabilization methods).

**C. SECTION 401, GENERAL CONDITIONS FOR NATIONWIDE PERMITS**

The following general conditions apply to all nationwide permits:

- i) Where practicable, wetland losses authorized under any nationwide permit requiring mitigation will be completed prior to or concurrent with project impacts.
- ii) For any general or specific nationwide permit conditions requiring notification in accordance with the notification general condition (i.e., Federal Register, Vol. 65 , No. 47, Monday, March 9, 2000, Part C.13(e)), "Agency Coordination" for project activities shall include coordination with that tribe or tribes affected by such project activities.
- iii) Work below the existing water level of the stream or work that may adversely affect water quality shall be avoided to protect spawning threatened and endangered fish according to the following dates: May 1-August 31 (Omaha, Ponca, Santee, and Winnebago), and May 1-August 15 (Iowa, Kickapoo, Potawatomi, and Sac & Fox of Missouri).
- iv) Work below the existing water level of the stream or work that may adversely affect water quality shall be minimized to protect spawning fish, that are not threatened and endangered, according to the following dates: March 15-July 15 (Meskwaki); March 25-July 15 (Omaha, Ponca, Santee, and Winnebago); and May 1-August 15 (Iowa, Kickapoo, Potawatomi, and Sac & Fox of Missouri)
- v) For any unconfined discharge of liquid cement in waters of the U.S., including grouted riprap, the permittee must notify the U.S. EPA as early as possible in accordance with the "Notification" general condition number 13.
- vi) Vegetated buffers must be established around mitigation wetlands. The vegetated buffers shall consist of native species, and will normally be between 25 to 50 feet wide.
- vii) Any activities involving waters of the U.S. that may affect the following resource areas of any size require notification to the U.S. EPA, Region VII, in accordance with the "Notification" general condition number 13:
  - fens, including nutrient poor fens or "bogs"
  - sedge meadows
  - seeps

- viii) Any fuel spill associated with any activity authorized under the Clean Water Act, Section 404 nationwide permits shall be expeditiously responded to by the applicant or by local emergency personnel. The permittee shall immediately contact the National Response Center at 1-800-424-8802 and, for spills located in Indian Country within Kansas, the Kansas Department of Health and Environment at (785) 296-1679 for spill reporting requirements.

#### **D. SPECIAL CONDITIONS FOR SPECIFIC NATIONWIDE PERMITS**

The following conditions are specific to each listed nationwide permit:

##### **Nationwide Permit 3. Maintenance Activities (for Low Water Crossings)**

1. This certification does not authorize discharges of any fill or dredged material that would result in an increase in height beyond the original dimensions for the repair of low water crossings.
2. Silt and sediment removal associated with low water crossings shall be limited to a maximum of 50 linear feet.

##### **Nationwide Permit 7. Outfall Structures and Maintenance**

For construction and maintenance activities:

1. Controls shall be in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.
2. This certification does not authorize activities which drain waters of the U.S. (e.g., via tile systems).
3. This certification does not authorize any water withdrawal from non-Section 10 waters.

##### **NWP 12. Utility Line Activities**

1. This certification does not authorize the construction of substations in waters of the U.S.
2. This certification does not authorize any water withdrawal from non-Section 10 waters.
3. Utility crossings must be placed as close to perpendicular as possible, and be limited to a maximum crossing length of no more than 1.5 times the width of the stream. Utility lines buried below the ordinary high water mark in any channel, except as a crossing according to the above conditions, will not be authorized by this nationwide permit.
4. Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for a period not to exceed one month.

#### **NWP 14. Linear Transportation Crossings**

Limit clearing of riparian stream corridors to the minimum necessary for project construction. Clearing limits must be specified in the construction contract.

#### **NWP 27. Stream and Wetland Restoration Activities**

This certification does not authorize the construction of levees and berms over 4 feet in height.

#### **NWP 37. Emergency Watershed Protection and Rehabilitation**

1. In addition to the information specified in the general condition 13(b), Contents of Notification, the notification must include documentation that the work qualifies as an "exigency" situation and that immediate action will be taken if nationwide authorization is verified. Also, notification must include:
  - a delineation of special aquatic sites;
  - the location of proposed spoil discharge sites and an analysis of siting alternatives; and
  - a delineation of wooded areas to be cleared and an analysis of alternatives to such clearing.
2. This certification does not authorize discharges for which notification is submitted more than one year after the official conclusion of the emergency that caused the "exigency" situation.
3. This certification shall not authorize channelization of streams or sloughs or removal of silt beyond what was deposited by the emergency event.
4. This certification does not authorize discharge of fill or dredged material into special aquatic sites if a practicable alternative that does not involve discharge into a special aquatic site is available. If discharge into a special aquatic site is unavoidable, discharge must be minimized.
5. The clearing or destruction of riparian areas shall be minimized. Clearing must be limited to one side of channels and only to enough space to provide equipment access.

#### **NWP 39. Residential, Commercial and Institutional Activities**

This certification does not authorize discharges resulting in the loss of more than 50 linear feet total of channel.

#### **NWP 40. Agricultural Activities**

1. This certification does not authorize the construction of levees, ditches, or drainage tiles.
2. This certification does not authorize the construction of building pads causing the loss of greater than 1/10 acre of wetlands that were in agricultural production prior to December 23, 1985 (i.e., farmed wetlands).

**NWP 41. Reshaping Existing Drainage Ditches**

1. Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for a period not to exceed one month.
2. Limit clearing of riparian stream corridors to the minimum necessary for project construction. Clearing limits must be specified in the construction contract.

**NWP 42. Passive Recreational Facilities**

1. This nationwide permit does not authorize the construction of facilities including nature centers, pit privies, sewage lagoons, and stables.
2. This nationwide permit does not authorize the construction of parking lots or golf course buildings.
3. This certification does not authorize discharges resulting in the loss of more than 50 linear feet total of channel.

**NWP 43. Stormwater Management Facilities**

This permit does not authorize the construction of new storm water management facilities in intermittent or ephemeral streams.

**NWP 44. Mining Activities**

This permit is revoked in Indian Country.